

## REMARKS/ARGUMENTS

Upon careful and complete consideration of the Office Action dated September 2, 2004, applicants have amended the claims which, when considered in conjunction with the comments herein below, are deemed to place the present application into condition for allowance. Favorable reconsideration of this application, as amended, is respectfully solicited.

The Office Action initially rejected claims 1-19 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More particularly, the wording of claim 1 was rejected as it appeared to the Examiner that the invention was directed to conditioning fibers which contain at least 40% non-ionics rather than conditioning fibers with a composition which contains at least 40% of non-ionics. Claim 1 has been amended to clearly indicate the latter. Claims 7, 10 and 11 were rejected for allegedly lacking antecedent basis for the recitation of “the fatty acid” and “the dicarboxylic acid”. Although it is respectfully submitted that antecedent basis for “the dicarboxylic acid” can be found in claim 1, in the line below formula (I), the Examiner was correct with respect to the term “fatty acid”. As will be discussed below, however, claim 1 has been further amended to include the subject matter of original claim 6. Said amendment provides the antecedent basis for the term “fatty acid”. Claim 3 was rejected as it was unclear to the Examiner whether or not the phrase “thermal oligomerization product” applied only to the one or more unsaturated fatty acids or to the other dicarboxylic acids listed as well. Claim 3 has been amended to clearly identify the various dicarboxylic acids. Support for this amendment can be found in the first paragraph on page 8 of the subject specification. Finally, claim 15 was rejected for missing a comma. The claim has been amended in accordance with the Examiner’s suggestion. Based on the amendments referred to above, it

is respectfully submitted that all of the §112 issues have been addressed and the rejection of the claims under this section be withdrawn.

The Office Action next rejected claims 1, 2, 4 ,5, 7, 10, 11-14 and 16-19 under 35 U.S.C. §102(b) as allegedly being anticipated by WO96/35661. Claims 1-5, 7-9 and 12-19 were further rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over the same reference.

It is axiomatic that anticipation under Section 102 requires that the prior art reference disclose every element of the claim. In re King, 801 F.2d 1324, 1326, 231 U.S.P.Q. 136, 138 (Fed. Cir. 1986). Thus, there must be no differences between the subject matter of the claim and the disclosure of the prior art reference. Stated in another way, the reference must contain within its four corners adequate directions to practice the invention. The corollary of this rule is equally applicable. The absence from the reference of any claimed element negates anticipation. Kloster Speedsteel AB. V. Crucible Inc., 793 F.2d 1565, 1571, 230 U.S.P.Q. 81, 84 (Fed. Cir. 1986).

As mentioned above, claim 1 has been amended to incorporate the subject matter of original claim 6. That is, the esterification method of the present invention now includes a fatty acid of the general formula (IV). It is respectfully submitted that WO96/35661 does not disclose, teach or suggest the presence of a fatty acid in the esterification reaction. Thus, WO96/35661 does not disclose every element of the main claim. The absence of said component from WO96/35661 clearly shows that said reference falls short of the anticipation standard of 35 U.S.C. §102(b). It is further noted that the Examiner must have realized this as claim 6 was not included in the §102(b) rejection of the claims based on WO96/35661.

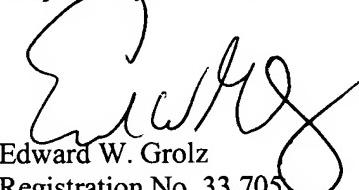
Applicants further respectfully submit that the examples in the present application demonstrate that corresponding cationic surfactants and/or esterquats that are obtainable in the presence of a fatty acid show good softening properties and that said properties could not

have been predicted or expected by the skilled person based on WO96/35661 or any other reference of record. That is, the invention as now claimed in claim 1 must also be viewed as non-obvious as there is no teaching in the cited reference of including a fatty acid in the esterification method. Again, this rejection of the claims by the Examiner did not include the subject matter of claim 6.

For the reasons stated above, it is respectfully requested that the rejection of the claims under both 35 U.S.C. §102(b) and §103(a) be withdrawn.

Finally, it is further submitted that all the claims in the application as presently submitted contain patentable subject matter and a Notice of Allowance is earnestly solicited.

Respectfully submitted,



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